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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

1122-8 RCE II

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Signature

mjmullin

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mjmullin

Application Number

10/748,943

Filed

12/29/2003

First Named Inventor

Keegstra

Art Unit

3641

Examiner

Hayes, B.C.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/96)

☒

attorney or agent of record.

Registration number 30,152

Signature

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

08/29/2007

Date

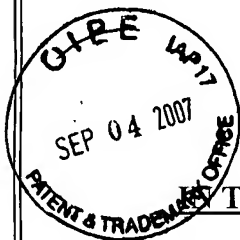
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐

*Total of _ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Keegstra et al. Examiner: Radi, John A.
Serial No.: 10/748,943 Group Art Unit: 3641
Confirmation No.: 7887 Docket: 1122-8 RCE II
Filed: December 29, 2003 Dated: August 29, 2007
For: EXTENDED RANGE LESS
LETHAL PROJECTILE

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M.J. Mullin

STATEMENT IN SUPPORT OF PRE-APPEAL BRIEF
REQUEST FOR REVIEW

Sir:

In support of the concurrently filed Notice of Appeal and Pre-Appeal Brief Request
For Review, please consider the patentability of the claims of the above-identified application
in view of the following remarks.

Remarks begin on page 2 of this paper.

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REMARKS

In a final rejection mailed May 29, 2007, the Examiner objected to claim 1 identifying an incorrect status identifier. Also, claims 1, 3-7, 9, and 11-14 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement and under 35 U.S.C. §112, second paragraph, as failing to set forth the subject matter which applicants regard as their invention.

In a response to the final rejection mailed on July 30, 2007, applicants attempted to address the claim objections raised by the Examiner. However, in Advisory Action mailed August 16, 2007, the Examiner indicated that the proposed amendments would not be entered as they are not deemed to place the application in better form for appeal. Undersigned counsel wishes to acknowledge that if claim allowability is indicated, amendments to the claims to overcome the rejections under 35 U.S.C. §112 will be re-entered.

The Examiner has finally rejected claims 1 and 3-6 under 35 U.S.C. §102(b) as being anticipated by French Patent No. 2639104 to Levoux et al. (hereinafter "Levoux"). The Examiner's rejection is respectfully traversed.

Independent claim 1 of the present invention recites a projectile having a generally cylindrical body including a forward end and a rearward end. The cylindrical body further

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includes a hollow cylindrical bore extending from the rearward end. As can be clearly seen in the figure of Levoux, the projectile 4, which is referred to as a ball, has a non-cylindrical body. The distal end of the Levoux projectile flairs outwardly to be received in a correspondingly shaped portion of the case 1. Moreover, the bore provided in the Levoux projectile is clearly not cylindrical, but has a trapezoidal configuration.

It is an axiom of patent law that for a reference to be anticipatory, the reference must clearly disclose each and every element set forth in the claim. Levoux fails to show a projectile having a generally cylindrical body and projectile having a hollow cylindrical bore extending from the rearward end. As such, Levoux, as a matter of law, cannot be anticipatory of the claims of the present invention.

Therefore, independent claim 1 and claims 3-5 which depend therefrom are believed to patentably distinct over Levoux. Reconsideration of the Examiner's final rejection is respectfully requested.

Claims 7 and 11-14 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 4,043,267 to Hayashi in view of Levoux. This determination is respectfully traversed.

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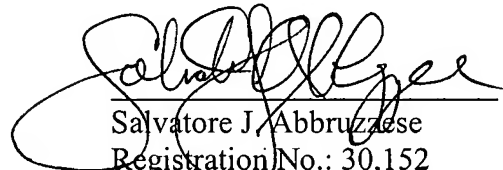
It would not be obvious to combine the teachings of Hayashi with the teachings of Levoux. The Levoux projectile is made of supple and elastic material and is designed for deformation upon exiting the casing. Thus, Levoux provides a flared skirt which is supported within the upper end of the casing so that the skirt can expand and operate with the rifling on the gun to produce the desired effect as it exits the gun. Hayashi, on the other hand, is a conventional shot gun round having a metal cylindrical projectile supported in a metallic casing. Hayashi is not designed to expand or to work with the rifling of the gun. Therefore, it would not be obvious to substitute the cylindrical components of the Hayashi round for the components of the Levoux projectile. Neither reference provides any suggestion to make such a change. Accordingly, it is respectfully submitted that claims 7 and 11-14 are patentably distinct over the combination of Hayashi and Levoux.

The claims of the present application are, therefore, believed to define patentably over the references of record, taken alone or in combination. Favorable action thereon is respectfully solicited.

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Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

Respectfully submitted,



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